

NON-FILING OF TIMBER HARVEST PLANS
Report of the Professional Foresters Examining Committee
To the State Board of Forestry & Fire Protection
March 8, 2006

On September 21, 2005, the Professional Foresters Examining Committee (PFEC) received a letter from Board of Forestry & Fire Protection Chairman Stan Dixon, signed by Executive Officer George D. Gentry, requesting that the PFEC looking into issue of submission of plans (Timber Harvest Plans [THPs], Non-Industrial Timber Management Plans [NTMPs], etc) to the California Department of Forestry and Fire Protection, and why plans were being rejected for filing and therefore unable to proceed through the review process.

Specifically, the Board Chairman asked the Committee to:

1. Review the general issues related to rejection of plans for filing.
2. Review the Department's procedures for determining when plans are "complete, accurate, and in proper order".
3. Review possible procedures to improve acceptance rates
4. Review the "CLFA Guidelines" to determine if these can be updated to current standards, and if guidelines can be adopted by the Board to assist in determining plan acceptability.

At the PFEC meeting held on October 20, 2005, the main topic of discussion was the issue of Plan filing. Each PFEC member was provided with background material, including summaries of legal and regulatory requirements covering THP content, CDF acceptance of plans, and CDF review of submitted plans. Also included was a copy of the current THP form and instructions, as downloaded of the Department's internet site; copy of a blank Archaeological Addendum and instructions; copy of a large industrial timber company's approved THP; copy of a small non-industrial timber owner's approved THP; and a copy of California Licensed Foresters THP Checklist (dated 2/1998, the last updated version). CDF staff from the Sacramento office participated in the discussion, as did a small number of private and association RPF's.

At the October 20th meeting, it was decided to have a subcommittee of the PFEC meet with both of CDF's major Review Teams located in Redding and Santa Rosa, respectively. The purpose of the meetings was to gain common understanding as to how the harvest plan review process works, get feedback on how Review Team staff view the process, and identify potential problems and possible solutions.

On November 10, 2005, a sub-committee of the PFEC consisting of Doug Ferrier, Hal Bowman and Licensing Officer, Eric Huff, met with the Redding Review Team of CDF, including clerical staff, CDF Review Team members, Review Team Co-Chairman Mike Bacca and Dave Craig, and Bill Schultz, CDF Deputy Chief for Forest Practice in Redding, who oversees the entire operation. Previous to the meeting, the PFEC was given copies of approximately 60 return letters covering THPS and NTMPs rejected for filing since the first of the year (2005). Each letter, addressed to the RPF of record, listed the reason(s) why the Plan was rejected for filing, and identified other non-fatal information deficiencies.

As would be the case with the later Santa Rosa Review Team meeting, the Staff and all CDF participants did an excellent job of explaining the physical process of handling and routing a harvest plan once it has been received, how their internal timelines work to achieve mandated timeframes for processing the plan documents, and how each Plan is reviewed.

On November 14, 2006, PFEC Members Doug Ferrier, Otto van Emmerik and Tom Osipowich, and Licensing Officer Huff met with the Santa Rosa CDF Review Team, which included clerical staff, CDF Review Team members, Wendy Snyder, Review Team Chair, and Leslie Markham, Deputy Chief for Forest Practice in the Santa Rosa office. Prior to the meeting, the PFEC was given copies of the return letters for 66 THPs, NTMPs and Major Amendments to Plans that had been rejected for filing so far in 2005. The subcommittee followed the same meeting procedure as was utilized in Redding beginning with an explanation of the physical process of plan handling through the actual plan review by CDF staff.

It is worth noting that the PFEC chose not to visit the Fresno office of CDF where southern region harvest plans are reviewed. This decision was made primarily because of the low number of plans reviewed at that location (69) and the low number of returns (10). Currently, Deputy Chief (Forest Practice), Bill Schultz out of the Redding office also supervises the understaffed Fresno office. As such, Chief Schultz was available for questions specific to plan review in the southern region.

Two members of the PFEC, Jerry Jensen and Mike Stroud were unable to make either of the Review Team meetings due to schedule conflicts and travel considerations. Given the significant distance these two members would have to travel in order to make the half-day meetings, it was clearly unreasonable to expect their attendance regardless of scheduling conflicts.

At a meeting held on January 18, 2006 in Sacramento the entire PFEC membership including two new appointees (Kimberly Rodrigues and Raymond Flynn) completed its open discussion of the harvest plan filing issue. CDF personnel from the Sacramento Headquarters and Redding Offices fully participated in the discussions as did a number of private and association RPF's. Summaries of past PFEC reviews of the issue were provided to PFEC members, as were the minutes of the 2002 Board meeting in which harvest plan filing issues were discussed.

PAST REVIEWS OF NON-FILING OF PLANS ISSUE

The PFEC, at the direction of the Board, has looked into the issue of non-filing of harvest plans at least 3 times in the recent past.

1993 Review

Probably the most extensive review of the issue was completed in 1993. The State-wide average of plans being returned at that time was 46%. The Committee looked at the 25 plans that had been returned in January, with the top five reasons for non-filing being: 1) Cumulative Impacts Assessment, 2) Notice of Intent issues, 3) Inadequate mapping, 4) Watercourse protection measures, 5) Harvesting Practices and erosion control measures.

The Committee developed a list of 19 items that were recommended to the Board for possible implementation by various parties to address the situation. Most of those suggestions were eventually implemented. They included:

1. Having available to RPF's an accurate set of rules in a timely manner. Mainly had to do with Barclay's revisions being done in a timely manner.
2. Develop THP checklists 1) for CDF to use during the review process, and 2) for the RPF's to insure that the THP is complete and accurate pursuant to 14 CCR §1037.

3. PFEC to support CDF's enforcement policy, found in CDF manual. Policy covered issuing citations to RPF's by CDF and the PFEC receiving copies of any issued citations.
4. Standardize a time frame when rules go into effect to allow sufficient notice and training of RPF's.
5. Retain the plan number for rejected and withdrawn THP's when resubmitted.
6. Expedite the development of a new THP form and instructions.
7. Expand RPF training for THP preparation.
8. Develop a mandatory continuing education program for RPF's.
9. Complete a mass mailing by the Director to identify a standardized Notice of Intent Form.
10. Clarification of what is "a current assessor's tax roll."
11. Clarification of what is a perennial and major stream for the purposes of identifying the distance required under the Notice of Intent.
12. Clarification of the difference between "explanation" and "justification" in the "Licensing News".
13. Make available THP history information at the Ranger Unit level for cumulative effects analysis.
14. Clarification of grey area on cumulative effects analysis- what is content vs. accuracy.
15. Clearly restate the language in 14 CCR §1037 with an explanation in the "Licensing News". Section 1037 has to do with the Department's preparation of a Notice of Filing, as well as Agency and Public review of plans, Director's determination timeframes, and Review Team assembly.
16. When CDF notifies an RPF of the rejection of a THP for filing, highlight those reasons for rejection pursuant to 14 CCR §1037, and separately identify those points wherein additional information would expedite THP review but do not constitute grounds for rejection.
17. CDF should make available a binder at the Regional and Ranger Unit levels that would include the THP review process documents, including mass mailings to RPF's and direction to regional offices.
18. Have the Review Team Chairs periodically meet to discuss consistency in THP review.
19. Encourage RPF's to provide cross references of related issues within the THP and to develop cross reference lists to assist in the THP preparation.

1995 Review

The 1995 review was a follow-up to the 1993 review and included an analysis by CDF Coast District staff of the last 58 THP's that had been rejected for filing. The most common reasons for non-filing of plans were identified as:

1. Notice of Intent Problems.
2. Missing required information related to silvicultural prescriptions, the Archaeological Addendum, mapping and required signatures.
3. Domestic Water Notice errors.

At the conclusion of this review, the Committee recommended that all RPF's writing harvest plans be encouraged to use the CLFA Checklist. In addition, a letter was sent to CDF, CLFA and to the Society of American Foresters (SAF), recommending that a THP preparation seminar be sponsored in which one the subjects to be covered would be plan filing rejections. CLFA did in fact hold such a workshop, with all parties actively participating.

2000 Review

The PFEC looked at a statewide return rate of 32% for THP's and 48% for NTMP's for plans submitted up to October of 2000. The Santa Rosa CDF office had the highest level of plans rejected for filing, while Redding was the lowest. A total of 695 THP's and 75 NTMP's were examined in the course of the review. The five main reasons for non-filing of plans were:

1. Archaeological issues
2. Notice of Intent problems
3. Silvicultural issues
4. Domestic Water Notice issues
5. Implementation of Act intent issues

At the end of the discussion, the PFEC directed the Executive Officer for Licensing to have an article in the next issue of "Licensing News" summarizing the problem areas related to submission of plans and advising RPF's to be more careful in proofreading prior to submittal.

2002 Board of Forestry Review

The Board held some workshops during its March and April meetings in which harvest plan submission and review was discussed among other topics. Data supplied by CDF indicated that the statewide return rate for THP's was about 23%, while NTMP's were at 43%. The Santa Rosa CDF office again had the highest percentage of the returns, while Fresno was the lowest. The top five factors identified for returns were:

1. Archaeological issues
2. Domestic Water Notice
3. Notice of Intent
4. Silviculture
5. Missing pages of submitted plan

The Board's intent in these workshops was to conceive ways to improve the plan review process and possibly reduce plan processing time. Workshop discussions included the topic of interagency communication during the review process among others. Possible solutions included pre-consultation with other review agencies, training and cross-training of writers and reviewers of plans, and increasing and maintaining agency funding levels to assure adequate plan review staffing levels.

CURRENT PLAN REVIEW PROCESS

2005 Plan Statistics

As supplied by CDF, there were 538 THP's submitted in the 2005 calendar year. Of these, 122 were rejected for filing (22.7%). Santa Rosa's return rate was 25%, Redding 22% and Fresno 8%.

For NTMP's, there were 42 submitted, and 16 of them were rejected for filing (38%). Santa Rosa's return rate was 39%, Redding's return rate was 30%, and Fresno had the lowest number of NTMP submittals (4) and therefore the highest return rate at 50%.

Plan Submission Process

Both Region I (Santa Rosa) and Region II (Redding) use similar processes to handle incoming harvest plans. Within the first two days of receipt by CDF, clerical staff looks through the plan to make sure certain specific items are contained within. Specific items receiving clerical review include public noticing documentation, the Archaeological Addendum, maps, page numbering, and consistency of the legal descriptions and acreage. If any of these items are missing, staff will try to contact submitting RPF to see if missing item(s) can be immediately faxed to CDF. If CDF cannot make contact or otherwise resolve the issue, the plan is immediately returned to the submitting RPF.

After the initial “two day” clerical review, plan content is thoroughly reviewed by CDF First Review RPF’s within the next 8 days (a total of 10 days after original submission of the plan, as mandated by regulation). Omissions of or errors related to required information discovered during this phase of the review result in plan returns to the submitting RPF. Returned plans are accompanied by a letter from CDF indicating the reason(s) for the return and typically identifying any other plan content issues requiring clarification or further information.

If no filing issue concerns were raised during the first 10 days review of the Plan, the Plan is filed by CDF and proceeds through the plan review process. NOTE: The review process was not looked at in detail in Fresno because only one person is involved and there were a low number of 2005 returns (8).

PFEC CONCLUSIONS

An analysis of the 2005 plan return letters shows that in almost every instance, the non-filing of plans appears justified under present Forest Practice Law and Board regulations. Thorough review of all of the return letters supplied by CDF for 2005 submissions revealed that no more than 10% of those letters contained items that compelled further clarification and discussion. The majority of plan returns were related to the following items:

1. Notice of Intent discrepancies
2. Domestic Water Notification discrepancies
3. Archaeological Addendum errors
4. Inadequate descriptions of site-specific Plan features (lacking explanations and justifications for in-lieu practices, inconsistent descriptions of proposed activities, etc.)

PFEC Concerns

1. **The Timber Harvest Plan (THP) is a complicated document. The recommended CDF form is 10 pages long, has 30 pages of instructions and the average plan submitted is typically in excess of 100 pages. The form was last significantly updated sometime around the year 2000. It appears to be out of date, given the current composition of forest practice regulations.**
2. **Many of the Plan omissions identified in the 2005 return letters appear to be errors in consistency of content or failures related to required information (Notice of Intent, Domestic Water Notification, Archaeological Addendum and associated Tribal Contacts).**

3. Time frames for processing and reviewing Plans are tight and having unfilled staff positions or staff people away from their jobs for any number of reasons can lead to processing challenges.
4. The current CLFA Checklist (last modified in 1998) is a lengthy, detailed document the use of which is not likely to reduce the complications of the present process.
5. Past communication methods to keep all RPF's informed of various changes and current practices, such as Director's or Forest Practice Memorandums and Professional Foresters Registration's "Licensing News" have all become more infrequent in recent years for a variety of reasons.
6. While CDF is under very tight time frames to initially decide whether to file a submitted plan (within 10 days of submission), there are no time frames for how long it takes for the RPF to get the non-filed plan back.

PFEC Recommendations for Addressing the Issue of Harvest Plan Returns

The PFEC recommends that:

1. The Department strive to clearly communicate submittal expectations to the regulated public while simultaneously avoiding internal rule interpretation. Where the Board adopted rules are not clear, the Department should seek clear interpretation directly from the Board in an open public setting.
2. The Board encourage the Department and the Executive Officer for Foresters Licensing to more frequently and consistently communicate with all RPF's. Communications should include, but not be limited to discussion of current "problem" areas in plan review along with helpful suggestions directed toward successful submissions and sources of further information.
3. The CLFA Checklist be immediately updated by paring it down to cover only those components that result in the majority of filing issues: Notice of Intent, Domestic Water Notification, Archaeological Addendum, and mapping standards. Revision should include input from both Department and non-government RPF's. Upon completion of CDF's THP form revision, a complete update of the CLFA Checklist is recommended.
4. The Department update the current suggested THP form such that it is consistent with the current state of regulation, and prompts Plan writers to include the required information. Revision of the form should include input from both Department and non-government RPF's.
5. The Board encourage the Department to more rapidly return non-filed plans or create regulations to require the Department to return non-filed plans to submitters within a set time frame.
6. The Board encourage the Director to adequately staff and fund all aspects of the Forest Practice Program.

PFEC RESPONSE TO THE BOARD CHAIRMAN'S INITIAL QUESTIONS

In his September 21, 2005 letter, the Board Chairman listed four items for review by the PFEC:

1. General review of issues related to rejection of plans for filing.

The PFEC has accomplished this review by meeting with the various CDF Review Teams and examining CDF's return letters for Plans not filed in 2005. The PFEC has also met with the CDF Headquarters Forest Practice Staff and held two open sessions of the PFEC in which the public and regulated RPFs were encouraged to attend and give input on the issue.

2. Review of Department procedures for determining when plans are "complete, accurate, and in proper order".

In the course of meetings with the CDF Review Teams, the PFEC has verified Department procedures specific to harvest plan review. These procedures include a preliminary clerical review as well as the more thorough review by staff RPF's. It was abundantly clear in both field visits that Redding and Santa Rosa plan review staff are intimately familiar with all aspects of plan review from physical handling to content examination. The 2005 plan return letters reviewed also serve to indicate that proper procedures are being followed by Review Team personnel in filing determinations.

3. Review of possible procedures to improve acceptance rates.

The PFEC has discussed a number of possible improvements as provided for the Board's review above.

4. Review of the "CLFA Guidelines" to determine if these can be updated to current standards, and if guidelines can be adopted by the Board to assist in determining plan acceptability.

The PFEC believes the CLFA Guidelines (Checklist) could be updated. However, this must be accompanied by an updated CDF THP form. Until such time as the suggested THP form is updated it may be more appropriate to pare down the CLFA Checklist such that only those components that result in the majority of filing issues are addressed. Regardless, full revision of the CLFA Checklist without the benefit of a comparable revision of the THP form is not recommended.